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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 936

WILLIAM DAVIES CO., INC.,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. JOHN L. TOMAN, County Treasurer and Ex-Officio County Collector of Cook County, Illinois,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

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Summary of Argument i

I. The only real point of any substance urged in this case is that the statutes under attack are void because not submitted to a referendum of the voters of the City of Chicago in conformity with the provisions of Section 34 of Article IV of the Illinois Constitution. The decision of the Supreme Court of the State of Illinois holding that the statutes do not come within the purview of that provision of the state Constitution is conclusive upon this court and presents no Federal question. 2

II. The contention of the petitioner that the acts violate the Fourteenth Amendment to the Federal Constitution was not adequately preserved in the state courts because although it was asserted it was not argued. Assuming that the point was properly preserved, it is without substantial merit because the classification of municipalities on the basis of population is reasonable and bears a proper relation to the subject matter of taxation and pension funds. 3-6

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MAY IT PLEASE THE COURT:

The respondent, the People of the State of Illinois, *ex rel.* John L. Toman, county treasurer and *ex-officio* county collector of Cook County, Illinois, opposes the petition for writ of certiorari on the following grounds:

I.

The only substantial question in this case involves a construction of the Constitution of the State of Illinois and this court is bound by the decision of the Supreme Court of Illinois that the challenged statutes are not repugnant to the Illinois Constitution.

Even a cursory examination of the petition for certiorari and the brief in support thereof discloses that the real argument made by the petitioner is that the statutes in question are repugnant to Section 34 of Article IV of the Illinois Constitution for the reason that none of the statutes were submitted for approval by the electors of the City of Chicago. This point was the only point urged before and considered by the State Supreme Court. That court held that the statutes under consideration did not come within the purview of Section 34 of Article IV of the Illinois Constitution, and consequently no referendum was required in order to make them effective. This question is purely one of local law and presents no Federal question. It is well settled that decisions of the court of last resort of the State are conclusive on this court as to the construction of the State Constitution and as to the validity of State statutes thereunder. This court accordingly cannot entertain this petition for writ of certiorari because what it basically seeks to obtain a review upon is the question of whether or not the Illinois Constitution requires a referendum upon the statutes under attack.

Louisville Gas Co. v. Coleman, 277 U. S. 32, 36;
Merchants Bank v. Pennsylvania, 167 U. S. 461, 462;
Bucher v. Cheshire Railroad Company, 125 U. S. 555, 582, 583;
Coombs v. *Getz,* 285 U. S. 434, 441;
Glen v. *Field Packing Company,* 290 U. S. 177, 178.

II.

The contention that the statutes violate Section 1 of the Fourteenth Amendment of the Federal Constitution was suggested but not argued in the State Court is asserted but not argued in this court, and is without substantial merit.

As we have heretofore stated, the only real argument made by petitioner is that the statutes violate the provisions of the State Constitution. The assertion that the statutes violate the Fourteenth Amendment is not argued seriously. In fact, as appear from pages 40 and 41 of the brief in support of the petition for certiorari the theory of the petitioner seems to be that "such statutes were not nor were any or either of them approved by a majority of the legal voters of the City of Chicago as required by Section 34 of Article IV, and, consequently, [are] * * * without due process of law and void because in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution." The supposed violation of the Fourteenth Amendment contended for by appellant appears to rest ultimately upon the supposed violation of the State Constitution.

It may well be questioned whether petitioner has preserved its rights to argue the alleged Federal question. The record does not contain the principal brief of the petitioner which it filed in the State court. The abstract filed in that court shows that objection was made to the statutes on the ground, among others, that the acts are in violation of the Fourteenth Amendment (Rec. 2-3). The briefs of the petitioner filed in the State court are not in the record and therefore it can be said that it does not affirmatively appear that the Federal question was argued. Actually the point was made, but no argument was made in support

thereof. This statement is adequately supported by the closing paragraph of the opinion of the Supreme Court of Illinois (Rec. 15) which states that appellant does not contend that the acts are vulnerable to any constitutional inhibition other than Section 34 of Article IV. The petition for rehearing which is contained in the record (Rec. 17 to 32) also is barren of any substantial argument in support of the assertion that the acts are in violation of the Fourteenth Amendment to the Federal Constitution. The mere averments that a Federal question is in the case is not sufficient to bestow jurisdiction upon this court in the absence of argument showing that the Federal question is meritorious. (*Goodrich* v. *Ferris,* 214 U. S. 71, 79, 81.)

If it be considered that the basis for the contention that the statutes violate the Fourteenth Amendment is that the classification of municipalities according to population with respect to taxation and pension funds is arbitrary and capricious, we submit that the mere statement of the proposition reveals its lack of merit. The policy of providing charter powers for municipal corporations by special laws or general laws, as the case may be, is governed solely by the States. (*Williams* v. *Eggleston,* 170 U. S. 304, 309-311.) It needs no extended argument to demonstrate that a rational relation exists between population and modes of taxation. We believe that it will suffice to refer this court to *People* v. *Schweitzer,* 369 Ill. 355 wherein the Supreme Court of Illinois sustained the so-called pegged levy statute involved herein against the attack that there was an arbitrary classification because the statute applied only to cities with a population of over 150,000.

The basic fallacy in the arguments of the petitioner on the question of classification is the failure to realize that the sum of $37,000,000 mentioned in the statute is simply a maximum amount. Not all cities and villages of over

150,000 population may levy that maximum amount. Under the Illinois law another limitation comes into play, namely, the corporate needs of the city. As was said in *People* v. *Schweitzer,* 369 Ill. 355, at page 358:

> "It must be remembered that the power to levy taxes is also restricted to the actual and necessary expenses of government."

The fears which petitioner expresses that certain municipalities of population approximating 150,000 would levy a confiscatory amount of $37,000,000, is completely unfounded. If the hypothetical municipality does not require the $37,000,000 to satisfy its corporate needs for the year, the statute in question does not give it the power to levy that amount. The general limitation, aside from the statute, that the levy cannot exceed the corporate needs operates to prevent the consequences which petitioner visualizes.

As to the three pension acts involved, very little need be said to justify the classification of municipalities which may take advantage of that act based upon population. It is a well known economic fact that pension funds cannot operate successfully unless certain minimum contributors thereto are present. Undoubtedly the legislature realized that in the smaller municipalities it woud be futile to set up pension funds because the number of employes who would be available to contribute to the fund would be so small as to render the plan not feasible. In *Hughes* v. *Traeger,* 264 Ill. 612, 618, the Illinois Supreme Court held that a classification of cities by population for municipal employes' pension fund purposes is constitutionally valid. The attack upon the classification of municipalities in the pension acts involved herein is without substantial merit.

Conclusion.

For the foregoing reasons it is respectfully suggested that the petition for writ of certiorari be denied.

Respectfully submitted,

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